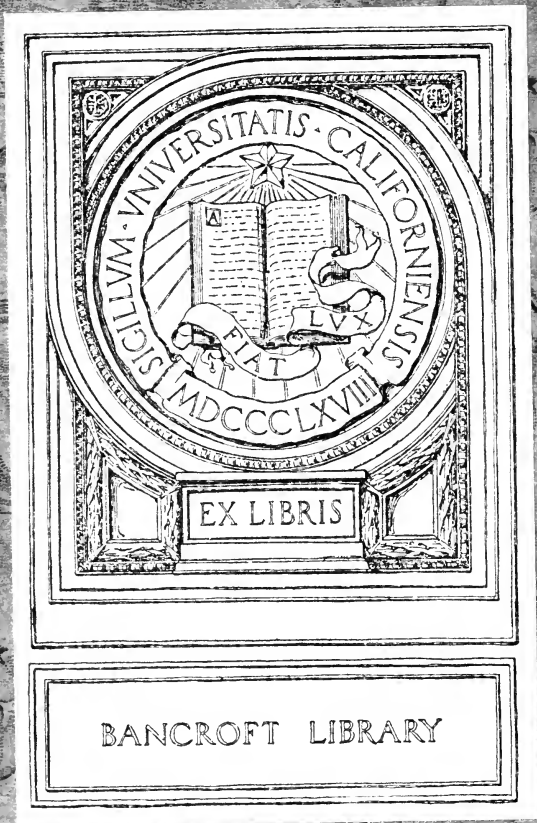


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SPEECH

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HON. ROBERT M. T. HUNTER, *1009-87*

OF VIRGINIA,

ON THE

RESOLUTIONS OF THE MASSACHUSETTS LEGISLATURE

CONCERNING

THE ASSAULT ON MR. SUMNER.

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DELIVERED IN THE SENATE OF THE UNITED STATES, JUNE 24, 1856.

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## ASSAULT ON MR. SUMNER.

On motion of Mr. BUTLER, the Senate, as in Committee of the Whole, resumed the consideration of the bill (S. No. 172) to authorize the people of Kansas to form a constitution and State government, preparatory to their admission into the Union when they have the requisite population.

Mr. HUNTER said: Mr. President, it was with deep regret that I first saw the announcement of the passage of those resolutions by the Legislature of the State of Massachusetts. I was concerned to see that great State interpose for the purpose of converting what seemed to me to be a personal dispute into the magnitude of a public quarrel. In the history of the two Houses of Congress since the institution of this Government, there have been many instances of personal collisions in which members have been engaged, arising out of words spoken in debate; but so far as I am acquainted with their history, this is the first case in which any State has interposed for the purpose of taking part in such quarrels. When Mr. John Quincy Adams, of Massachusetts, was President of the United States, his Secretary of State challenged a Senator from Virginia for words spoken in debate, and the quarrel thus made was not settled until two shots had been exchanged on the ground. The Legislature of Virginia did not interpose for the purpose of demanding of the Senate to protect the privileges of its Senator, or to shield him from the consequences of his speech; but, on the contrary, it was content to leave him to meet all his personal responsibilities, under the belief that he would be able to defend himself. There have been cases in which members have fallen at the hands of each other for disputes arising out of debates; and yet I know of no instance before, in which the Legislature of any State has stepped forward to prejudice the case, and to pronounce the sentence which is to be given.

I can see no consequence so likely to flow from this attempt, in the present instance, as that of exasperating the unfortunate sectional dispute which is now raging in the country. But, sir, that was not the only thing in these resolutions which excited pain and regret in my mind. I was

concerned to see that, when the State of Massachusetts sat in judgment on this case, it had nothing to say by way of rebuke to its Senator for the offensive language which he uttered, not merely towards a majority of the members of this body, or towards certain individuals who were in it, but towards all the slave States, and particularly towards the States of South Carolina and Virginia. Not only did she have no word of rebuke to offer for such a speech—a speech which called out from the venerable Senator from Michigan [Mr. Cass] the declaration that it was the most unpatriotic and un-American speech he had ever heard on this floor—not only, I say, did she have no word of rebuke to utter for the offensive personalities of such a speech, but she actually indorsed and encouraged them, for she returned him her thanks for having made them; for in no other light can we regard her resolution “approving” of Mr. SUMNER’s manliness and courage in his earnest and fearless declaration of free principles, and his defense of human rights and free territory.

Mr. President, so long as the attacks on my State emanated from a single individual, I had nothing to say. Virginia can live under the taunts of any individual, I care not who he be; and portentous indeed would be the day, if it should ever arise, when can be said, the

“Falcon, tow’ring in her pride of place,  
Was by a mousing owl hawk’d at, and kill’d.”

But when a State of this Confederacy comes forward to indorse the attack, and to thank the person who has uttered what I conceive to be a slander, it appears to me that I owe it as a duty to my constituents and to myself, as well as to others who may be concerned, to examine into the foundation upon which this accusation has been so unnecessarily and unprovokedly made against my State.

I pass over the personalities towards friends of mine on this floor—towards myself even, so far as I am included in that majority who voted for the Kansas-Nebraska bill, and towards the slaveholding States in the generality, to which I belong; and

I come to the specific attack on the State of Virginia, which I understand the State of Massachusetts to indorse and approve. The Senator from Massachusetts, [Mr. SUMNER,] speaking of my colleague, said:

"He holds the commission of Virginia: but he does not represent that early Virginia, so dear to our hearts, which gave to us the pen of Jefferson, by which the equality of men was declared, and the sword of Washington, by which independence was secured; but he represents that other Virginia, from which Washington and Jefferson now avert their faces, where human beings are bred as cattle for the shambles, and where a dungeon rewards the pious matron who teaches little children to relieve their bondage by reading the Book of Life. It is proper that such a Senator, representing such a State, should rail against free Kansas."

The foundation upon which this accusation rests—and it has not even the poor merit of originality with him who has last made it, is the fact that slavery, and as a consequence of it the slave trade, exists in the State of Virginia—that is to say, slaves are not only held in bondage, but, being treated as property, it follows as a consequence that they are sold from one to another. These are the facts upon which the attack is based. The coloring in which it is dressed up depends on the fancy or the taste of him who may happen to use the brush. I say it has not even the poor merit of originality, but it is a stale and hackneyed reproach in the cant of all the abolition newspapers. It was made by a distinguished scholar and rhetorician on the other side of the water, who assailed the States of Virginia and North Carolina for what he called the domestic slave trade—a man who, though distinguished for his felicity in picture writing, too often mars its effect by the extravagance of the coloring which he uses—I mean the celebrated Macaulay. The foundation on which this rests is, that owing to the fact of the juxtaposition of these two races on our soil, slavery has flowed from it as a necessary incident. These are circumstances of long standing, and for which we are no more responsible than those who accuse us. History proves that, so far as Virginia was concerned, this institution was fastened upon her against her remonstrance by the British Government. History also shows, and the Senator from Massachusetts confesses, the complicity of his State in his speech, that the slave was sold to us in great part by the men of Old England and New England; and surely the buyer could not have been more responsible than he who sold to him.

Now, sir, out of the fact that these races have been standing together side by side in great numbers in the relation of master and slave, it has followed that the happiness of both races requires that this relation should be kept up. This has been proved by the experience of the British Government itself; and if there were no such experience, it could be proved by any one who knew how to reason upon the principles of human nature. Turn them loose to-morrow side by side, and you would see the black race perishing in the fierce competition which would ensue with the superior and white race, which was dominant around it. You would see either that, or you would see that as they increased in numbers, and population began to press upon the means of sub-

sistence, the white man would leave the country and abandon some of the fairest portions of this continent to the occupation of the negro. We know that from the experiment which has already been tried. I may say that human nature and the experience of States around us both teach us that, although the slave would be nominally emancipated, he would in fact be in far worse bondage than he was held before. He would have not one, but many masters; and instead of having some one person who was responsible for his protection, who was linked to him, as all persons are who inherit slaves, by the ties of a certain sort of family connection, he would belong to every white man, and nobody would be responsible for the treatment by which he was crushed. I say this is proved, too, by the experiment which has been tried by the English Government itself in the West India Islands. We know that if a similar experiment were tried here, its effect would be to substitute barbarism for civilization, and that the wilderness and waste would begin to encroach at once upon the cultivated field.

We know, on the other hand, that under this institution of slavery we can present more than three millions of African negroes who exhibit a greater degree of progress and improvement, of happiness and virtue, than the same number of that race who can be found under any other Government or in any other clime. I say, then, that we can point to all these things to prove, and to show, that the holding of these men in bondage is the necessary result of those circumstances which originated out of the action in part of Old England and of New England herself. Now, if we can show that the preservation of this relation inures to the benefit both of the white and the black race, and that to destroy it would effect a cruel injury to each, do we not show what justifies us in holding them in that condition? Do we not give reasons which prove that it is our duty to do so?

By what right, then, does any man reproach us for doing that which places the society of our country in the very best possible position? Sir, the statesman is not responsible for not attaining the greatest ideal good. He is responsible for not doing the best under the circumstances; and he who has done that has discharged his full duty to his race and to his principles. Are we to say, we will put down any organization, social or political, in which we find individual cases of evil and injustice? What social system or institutions would stand?—what government on the face of the earth could endure for a minute, under such a doctrine? We know that in the great scheme of creation itself, framed by an all-powerful, all-wise, and all-good Being, evil exists. He permits it, and why, we do not understand; but he does not destroy the works of his creation on this account. We know that, in any form of society which could be organized, evil must exist; and to reproach a statesman or a people because in their institutions they may not have attained perfection, is to demand of them more than is possible for human nature. All that they can be required to do is what is best under the circum-

stances. He who demands more, and makes war upon all Governments in which more is not effected, is an enemy of his race, and a disturber of the peace of mankind—a man to be ranked, not with the statesmen, but with the madmen of the world.

Now, sir, I ask if both reason and experience do not prove that to retain these two races in that relation on our own soil is the very best thing which can be done for them? But, Mr. President, the mischief of the attempt to turn these slaves loose, for the not doing of which we are thus reproached both abroad and at home, would not be confined to the two races on our soil; it would extend to those very countries which hurl these reproaches at us, and to the whole civilized world. There are probably as many people outside of the slave States who derive profit and existence from the proceeds of slave labor, as are to be found within them. On the great staple of slave-grown cotton, it is now estimated that nearly, or quite, three million British subjects depend for their subsistence. I take this from the recent declaration of the Manchester Peace Society, and I have seen a similar declaration before. When we come to add the number who depend on the other slave-grown staples, not only in Great Britain but in all Europe, and in the free States of our own Confederacy, we should find; I believe, that there were more depending for their existence on the institution of slavery, and its profits, outside of our slaveholding States than within them. We should find, probably, if we could pursue the inquiry strictly and accurately, that Massachusetts herself is more interested in the profits of slave labor, and subsists a larger number of people upon it, than do, perhaps, the States of Maryland or Missouri, or even some other slave States which I might enumerate.

Not only this; but those who thus make slavery profitable by creating the demand for the products of slave labor, are as much responsible for the institution as we are who own the slaves. The deadliest blow that could be dealt to slavery would be to refuse to receive the products of slave labor. Do that, and you destroy the demand which makes it profitable. Do that, and, so far as Old England or New England are concerned, you would do it at only a pecuniary expense; but it would cost us not merely money, but our social and political happiness. They could do that at a mere pecuniary expense; but will they do it, or have they done it? Why, sir, it is a little remarkable that, in this very philippic which Macaulay uttered against the institution of slavery in Virginia and North Carolina, he was engaged in the work, in which he succeeded, of repealing the discrimination against slave-grown sugar, which had been made for the benefit of their own colonies, upon whom they had forced emancipation. He not only made it to force the repeal of that discriminating duty, but he succeeded; and England did repeal it, notwithstanding the obligations which she owed to her colonies, on whom she had forced this harsh measure, to give them, at least, that advantage in her own markets.

If we examine the history of the institution,

we find, as I have just endeavored to show, from its commencement to the present period, that those who now reproach us are as responsible as we. In the first instance, they sold the slave and we bought him. Now, we sell the products of his labor and they buy it. The complicity is the same; the process is reversed. It has been said, sir, and well said, that the judgment of him was to be commended,

“Who sent the thief that stole the gold awaf,  
And punished him who put it in his way.”

Upon that principle, I submit that, if there be guilt and if there be wrong in maintaining this relation, they are as responsible for it as we are. But in point of fact there is no guilt either in the one or in the other. The wrong is in converting that into a matter of reproach against us which is not properly the subject of reproach, and for which, if it were, they are as much responsible as we are.

Mr. President, it is said that slaves are sold as chattels and as property from one to another in the States in which the institution is tolerated. I know that this presents a splendid field for declamation; and if I had not known it before, I should have known it after following Macaulay in his display upon this subject. I know that individual cases may be selected, some of which are real, and some of which are imaginary, in which hardships and misery may be shown; but notwithstanding all that, I say the practice of selling them from one to another, and the slave trade itself, is the very safety-valve of the institution, so far as both races are concerned, in the South. It is owing to this that the slaves have been able to make the progress which they have done. It is through this process that they acquire the means and facilities for emigration which are necessary for the improvement of every race that has ever made any improvement in the history of man. The stronger races satisfy this necessity of their condition by armed emigration; the weaker are made to do it by forced emigration; and history shows that the African has performed his share of that process, from an age beyond the date of the pyramids, in the caravan of the slavetrader. Some of the very routes which he then traveled are pursued by him now for the same purposes and objects as if they had been traced out for him by some inexorable law of nature.

We know from experience that in the southern States it is this which has mitigated the institution and ameliorated his condition; because it is under this, that, when population begins to press on the means of subsistence, he is removed from a place where his labor pays but little to one in which it pays more, not only to the master but himself. Although it may seem to be hard that he should be thus forced to emigrate at the will of another instead of his own, yet, when we come to scrutinize closely the process, we find that the line of emigration which he pursues according to the laws of trade, is precisely that line which he would take if he were to follow only his own interests. Should we not find, if we were to examine it, in the history of the emigration of whites, as many individual instances of misery and suffering, as many cases of separation between

members of the same family, as we do amongst the slaves who are thus sold from one State to another? I believe that, if we could trace the matter, we should find that the emigration from the Sutherland property, in Scotland, (Mr. Macaulay's own country,) was as involuntary in its movement and as sad in its consequences to those who made it, as any that ever took place from Virginia or North Carolina to the cotton States south of them. In the crowded population of the Old World, I believe we could find instances of emigration forced by circumstances which would harrow the heart fully as deeply as any that could be referred to in our States.

Why, Mr. President, under the operation of this trade, the effect has been that the moment the negro's labor becomes cheap in one region, and he gets a smaller share of the profits of his labor, he is transferred to another where the profits of his labor are greater, and where, of course, he gets a larger share, and where, in the end, he receives more consideration. Stop that trade to-morrow, and I believe you would inflict the greatest curse on the slave in the South that could be inflicted upon him. Pen him up in the old States, and the consequence must be, either that he must perish under the sufferings of a collision with the stronger race, when population presses too hard upon the means of subsistence, or else the whites will abandon the country, and leave it to the negro and his original barbarism.

Under these circumstances, if this process be one of relief and amelioration to the slave, I ask how is it that it should be the subject of so much reproach to those who permit it, and who find it necessary for the improvement of this very race that they should do so? If in truth it did deserve the reproaches which have been cast upon it—if in truth Virginia did accusations deserve the which have been thus made, I ask if it lies in the mouth of Old England, and New England, to utter them? I ask if it was out of their quivers that she had a right to expect such an arrow to be directed at her? Have I not shown that they were as responsible as we for the circumstances which make this institution necessary; that if we were the buyers they were the sellers; and that if we sell the product of slave labor they buy it, and contribute their full share to the maintenance of the institution? If they would destroy all trade from which there may be possible evil, why do they continue this, upon which the institution of their attacks depends for its existence?

Sir, in regard to Massachusetts, she was not only glad to receive our assistance in the Revolution, when we both held and sold slaves, but she was willing to admit us into the same family with herself. The men of that day—the men of the revolutionary generation who covered the name of Massachusetts with glory, the generation which produced the heroes of Concord, and Lexington, and Bunker Hill, and gave birth to the sages that illustrated the revolutionary councils, was not only willing but glad to receive Virginia into a family alliance. They were willing to enter into an association by which they bound themselves to put down insurrection in the States—by which they bound themselves to give a certain represent-

ation for the slaves—by which they bound themselves to restore the fugitive slave. And here it is to be remembered, that the covenants which they entered into the men of that day always kept. Under these circumstances, after they invited us into that family alliance, I ask if it is fair, if it is rightful, if it is honorable in their descendants to use the common Hall provided for our common deliberations for the purpose of abusing and vituperating us on account of that very state of things of which they had knowledge and cognizance when they entered into this union with us? I ask if they are not estopped by their own deed?

Now, Mr. President, we hear a new doctrine. We are told that the men of the present day are not to be held responsible for the men of that generation, which is branded by one of their descendants with turpitude. It is the Senator from Massachusetts who says, "Is the acknowledged turpitude of a departed generation to become an example for us?" Thus they are not content with hurling accusations against us, but they brand with turpitude the memory of their ancestors who entered into those bonds by which they became members of the great family of States, to which Virginia, too, belongs. Sir, if I am to choose between the generation which gave birth to the heroes and sages of whom I have spoken, and the men who now cast shame on their graves, I say, let me rather commune with the memories of those than walk in the living presence of these. If I am to choose between those heroes and sages, as I said before, who entered into a covenant to restore the fugitive slave, and who kept it, and these latter-day saints, who, whilst they claim all the benefits of the bond for themselves, refuse to execute their part of the compact, because they have discovered some law of higher obligation, which dispenses with the obligation of their oaths to support the Constitution, and discharge its duties, I say, let me associate with the men who made that covenant, and kept it, in preference to those who are breaking it. If I am to choose between the generation of men who, under the guarantee of treaties, under the sanction of laws, transferred the African from a worse to a better condition, and those who, in violation of law and of the Constitution, steal away the southern slave, and transfer him from a better to a worse condition, let me live with the first rather than with the last. If we have enjoyed the respect and affection of that generation which covered the name of Massachusetts with glory, we may live under the taunts of those who strike at the very memories of their fathers, because it is only through them that they may aim a blow at us.

Turpitude, sir! to talk of the turpitude of the generation of men who gave to Massachusetts the fair inheritance of glory which some of their descendants are now wasting so rapidly! When I hear such charges, I pause before the majesty of the silent shadows of those mighty dead, and wonder that a voice is not given to them to speak to those of their descendants who are thus violating their engagements, trampling on their ancient friendships, and casting shame on their names and graves. But, sir, why do I wonder?



If such a voice could be evoked from the tombs, and were it to charm ever so wisely, it would fall unheeded on the ear of the fanatical Abolitionist. He will not hear Moses and the Prophets; nor would he hear their voices, even if they could be permitted to speak to him.

But these are not the only charges. We are told of the dungeon to which the pious matron is consigned in Virginia who teaches the slave to read. Sir, I have seen in the State of Virginia thousands of slaves who could read and write; and if there ever was any matron, pious or otherwise, who was imprisoned for teaching them, I have yet to hear the history of the case. I have never known such a case; I do not believe that one exists. I think I have been told, that in one of the States of this Union there is a law making it penal to keep Christmas; but does any man suppose such a law has ever been enforced within the last quarter of a century? Suppose it were so; suppose some such enactments as these charged upon Virginia were to be found upon our statute-book, who are responsible for them? Are not those responsible who say to us, "Educate your slave at your peril; give him light and intelligence if you dare; and, if you do, we will make these gifts the means of applying the knife to your throats, and the torch to your dwellings?" Are not these the persons who would be responsible, and not we, if such things were to be found on the statute-book? I will say, however, not to them, not to those who have nothing to do with it, but to my countrymen in the South, that I believe it is our duty to remove whatever may cumber unprofitably the statute-book, whatever is improper or unjust. I believe that the progress of light and intelligence in both races is not incompatible with the institution of southern slavery. I believe that we are responsible for the happiness of all who are committed to our charge, whether they be white or black; and I say, let us do right in despite of the Abolitionist, however he may throw himself in the path of the improvement of the slave. We are strong enough within the Union, or without the Union, to defend ourselves, and with the blessing of Providence let us do right, and leave the consequences to God. To him who intrudes his opinion upon us—to him who has no right to make an inquiry as to our domestic affairs, I have only to say, "There is the southern slave; he speaks for the institution of slavery in our section; produce to us the same number of African negroes in bondage or otherwise, and in any other country, who have made the same progress in improvement, and then we may acknowledge your right to reproach us; but, until you do that, we are entitled rather to the voice of approbation and the hand of sympathy.

Mr. President, in taking the floor upon this occasion, it was my object in part to defend the State of Virginia against the aspersions which have been so unjustly cast upon her. I do not mean to say, for perhaps it does not become me to do so, anything by way of eulogy upon her. If I were to attempt such a thing, it might be thought that my partiality disturbed my judgment. She has taken her place in the great Pantheon of history. Posterity will pronounce its

judgment on her present, as public opinion has given it upon her past. I speak the judgment thus pronounced when I say that the Virginian was the first great pioneer of the Anglo-American race upon this continent; that, upon the waters of the James he laid the first stone in the foundation of its empire; that he was the first to plant the banner of its civilization in the great valley of the West; and as the tide of population poured onward from the rising to the setting sun, the smoke of his camp-fire was ever seen far away in the distant wilderness as a pillar of cloud to guide the march of the coming column, and as an emblem of the presence of man to dispute the mastery and the empire, where nature had hitherto held its wild estate, and where silence and solitude had reigned supreme. Still onward as he passed, he left behind him institutions of government and the foundations of human society. He may have had his faults, and doubtless he did have them, and has them now; but amongst those faults covenant-breaking is not to be reckoned. He loves the Constitution and the Union of his country. He reveres the names of those who made that Constitution and Union, whether they came from Massachusetts or from Virginia; and so far from casting shame on their names or their graves, he would take off his shoes and walk silently and softly into the sanctuary which was hallowed by the ashes of those mighty dead.

But, Mr. President, as I said before, it is not my purpose to eulogize my native State. Neither the Senator from Massachusetts nor I, by taking thought, can diminish or increase, by a single cubit, the proportions of her stature. There she stands; and it is for History, not for me, to speak of her.

I come now, Mr. President, to another branch of this case, and another part of these resolutions. I pass away from that in which Massachusetts expresses her approbation of this unparalleled attack on States and their representatives, and come now to the other resolutions, in which she undertakes to sit in judgment on a case here pending, and not merely to request her Representatives, and to instruct her Senators, as other States do, but to "demand" of us that we should carry out her *fiat* and execute her judgment. I am willing to admit that Massachusetts is fully the equal, and has all the rights, of any other State in this Confederacy; but I cannot concede to her that she has more than all the rest besides. I cannot agree that she can come here and demand that her opinions shall be our law, and that her judgment is to be executed by us.

What gives her the right to claim this preëminence? Has she shown any superior fidelity to the laws and to the Constitution of the country? Has she shown that, in this regard, she is more entitled to have her opinions respected and enforced than the other States of the Union? She can make no such claim, whilst the personal liberty bill stands upon her statute-book. While she claims all the benefit conferred on her by this Union and its Constitution, she is bound by an honorable obligation to carry out the duties which it imposes on her in return. Every man who lives under this Constitution and enjoys its ben-

efit, is bound, so far as he is able, to carry out its obligations, and to discharge the duties which it imposes on him.

I know it has been said by some of them that they did not believe Congress had the right to pass any law in regard to fugitive slaves. Those persons, or some of them, believe then that it is the duty of the State; and it was their duty to endeavor to adopt some State law for the purpose of discharging the obligation which is imposed by the common compact. Can such persons acquit their consciences of blame unless they make some effort to perform this duty to which they are bound? And yet no such attempt has been made. But there are others again who say that they believe there is yet a higher law, whose obligations restrain them from carrying out this part of the Constitution. I say to them that, whilst I admit, when the laws of God and man come into conflict, you must obey those of God rather than of man, at the same time it follows as a consequence that this law of God would forbid you to take an oath to support the Constitution which contained a provision contrary to its obligation. If your obligations to God forbid you to discharge the duties required by the society whose government protects you, nothing is left for you but to abandon that society if it will not change the government. You can have no right to enjoy the benefits and protection of that Government, and then refuse to perform the conditions upon which those advantages are extended to you.

Now, sir, if it be an individual who is in this unhappy case, there is nothing left for him but to expatriate himself at once, or else make up his mind to meet the penalties of the violated law. So, too, if a State finds itself unable, from conscientious scruples, to discharge its written obligations, and perform the conditions upon which the Union was formed, there is nothing left to it but to leave that Union. It cannot be right to treat the covenant as binding in all that is beneficial to yourself, and void and invalid so far as you have promised to discharge certain duties towards others. Is she not bound either to say "We will carry out the whole instrument; we will perform our part of the consideration?" or else, "Our conscience forbids us to remain in the same family of States with you, so long as this provision is in your Constitution, to which we object, and against which we have scruples?"

I say Massachusetts cannot justify herself in resisting the obligation of this law, and claiming, at the same time, all the benefits, both general and special, which the Constitution confers upon her. There is, probably, no State in this Union which has derived as much benefit from it as the State of Massachusetts. The navigating and manufacturing interests which have given her the immense wealth of which she boasts, have been the special creatures of legislation and of protection. Whilst she enjoys all these, is she not bound to make some effort, in some way, to carry out the reciprocal duty which the Constitution imposes upon her?

Then, Mr. President, if the claim which she has to be heard, more than all the residue of the States together, does not rest upon her superior

fidelity to the obligations of the Constitution and the law, upon what does it rest? Does it repose upon the peculiar calmness of the judicial temperament which she brings to the task of deciding upon this delicate case? She begins her resolutions with a railing accusation against the offender; she characterizes him with all sorts of epithets; and then ends by pronouncing judgment before he has been heard, or before a trial has been had by the competent and proper authorities. This judgment she pronounces upon the ground that in this case there has been a breach of the privileges of the Senate.

I am willing to admit that for that opinion Massachusetts has probably the sanction, as the case first appeared in the papers, of some of the old precedents of the two Houses of Congress, and that also she has the authority of a written report on this very case which passed the Senate a short time since. I have a right to speak of that report, because I, for one, acquiesced in it. At the time, I believed that it was right and proper; and it was only on subsequent investigation that I came to the conclusion that we were claiming, in fact, a privilege which did not exist. Sir, I do not believe that, so far as we were concerned, it was a breach of privilege. I believe there was neither precedent nor authority for us to send a message to the House of Representatives on the subject, and take the position of prosecutor before it. I believe it was a case for the courts, and for the courts alone; and upon that point I beg the Senate for a few moments to give me their attention.

Suppose this had been the case, not of a member of the House of Representatives, but of some citizen of the District, who had made the assault upon a Senator. I say, if it were, I think I can show that you could do nothing with him, and would have no power to punish him, but that the sole power which exists is in the courts, and that there a Senator has the protection which every other citizen possesses—a protection ample and full—an independent tribunal to judge the case, fully armed with jurisdiction and powers for the case and for the occasion; but, beyond that, I do not believe the Senate could have punished an individual for an occurrence which took place when it was not in session, and not within its view.

If I were called upon, disembarassed of the precedents which have been quoted, to give, *a priori*, a theory of privilege as it might be derived from the Constitution, I should say that the Constitution itself had defined the special privileges which it designed to give to members of Congress. In the first place, it provided that a member should not be held answerable elsewhere for words spoken in debate—that is, that he should not be held answerable under any legal prosecution for words spoken in debate, because, if it meant that he was not to be questioned at all, he would be exempted from criticism by the press, or by public speakers before popular assemblies, for the very reasons which are assigned to protect him against other assaults upon account of his speech; for such criticism would be more likely to deter some from the open expression of their opinions than any fears of personal violence.

Unless, then, you restrict this grant of privilege as I have done, it must be carried to a length utterly inconsistent with the spirit of the Constitution.

The other special privilege which it provided for him was, that he should be exempted from arrest, except in case of treason, felony, or breach of the peace. Here, again, is a privilege which is to be executed, not through either House of Congress, but through the courts of law; because it is to be remembered that the history of the formation of this Constitution shows that the Convention refused to permit each House to be the judge of its own privileges. A proposition was made (3 Madison Papers, 1365) that "each House shall be the judge of its own privileges, and shall have authority to punish by imprisonment every person violating the same, or who in the place where the Legislature may be sitting, and during the time of its session, shall threaten any of its members for anything said or done in the House; or who shall assault any of them therefor; or who shall assault or arrest any witness, or other person, ordered to attend either of the Houses, in his way going or returning; or who shall rescue any person arrested by their order." To this Mr. Madison objected, (*Ibid.* 1493,) who "distinguished between the power of judging of privileges previously and duly established, and the effect of the motion which would give to each House a discretion as to the extent of its own privileges. He suggested that it would be better to make provision for ascertaining by law the privileges of each House, than to allow each House to decide for itself." The sense of the convention was against this provision, and these privileges, in my opinion, were for the most part defined. The Constitution has said what should be the privileges of Senators and Representatives, and they are privileges which can be plead and used in courts of law alone.

Suppose an officer were to arrest a man who was privileged by the Constitution from arrest. The remedy against him would be, that the man thus arrested could plead that privilege in order to be released, and he could sue the officer for false imprisonment; but could this House take up the officer and punish him? Surely not. The Constitution itself provides that no man shall be punished either in life, liberty, or property, except by due process of law. The theory of our Constitution is one of law and of equal rights; and when any one is endowed with a special privilege, it is designated and specially given. If anything could be implied beyond this, it would be in regard to the privileges of the two Houses themselves in their corporate capacity. In Dunn's case (6 Wheeler) it has been decided that each House may claim such privileges upon the implication that it is necessary to protect their own existence, and to preserve the functions which were given them. This admission, it is said, puts an end to the argument, that the privileges of Congress are defined by the Constitution. Not at all. There is a law of nature which precedes that of man, and that is the right of self-preservation, which pertains to all bodies, artificial as well as natural.

Now, if this implied power exists until protection is afforded by law, what is its extent? The Supreme Court has said, in regard to the extent of the power to punish in such cases, that "it was the least possible power adequate to the proposed end." The same may be said of the privilege thus to be claimed, which, as it seems to me, would limit either House to what might be necessary to prevent intrusion or contempts within its presence and within its own view. Beyond that, nothing can be claimed for it by way of implication; and I doubt if these cases are not such as might be better provided for by law than by the exercise of an arbitrary discretion on the part of the two Houses of Congress.

Mr. President, so far I have been speaking only of the privileges of members of either House, or of the Houses themselves, in regard to others than their own members. In relation to their own members, each House has discretionary powers, which were given it to enable it to control its own proceedings, and to enforce its orders within the body itself. Of these I shall speak hereafter: they are not involved in the question of the extent of the power of either House to punish *others than its own members* for breach of privilege.

How, then, sir, have these claims been extended beyond what the Constitution has allowed? How have these precedents originated, which have been relied upon and referred to? They have originated in analogies attempted to be sustained between the English Parliament and our Congress. The sources from which these two bodies derive their powers are as different as possible. There, precedent makes the law; here, it is made by positive grant. There, their privileges were the slow accretion of ages, gathered and wrested, one by one, from the Crown. There, each House is the judge of its own privileges; here, the Federal convention expressly refused to make each House the judge of its privileges; and if questions arise, they have to be decided in the courts of law. To show that we cannot claim power here upon analogies drawn from the practice of the British Parliament, I need only refer to many of the cases in which privileges have been claimed and acted upon by the House of Commons. It can hardly be necessary to refer to Hatzel for them, as the recollections of the Senators themselves will doubtless supply the instances. But if any one desires to see a *resumé* of some of the most absurd, he may refer to the argument for the plaintiff in Stockdale's case, (2 Perry and Davidson,) where he would see powers exercised in the name of privilege which, if attempted to be exercised here, would bring down upon our proceedings shouts of derision and execration from the American people. They punished trespassers who fished in the pond of a member of the House of Commons; or who dug Lord Gage's coal; or plowed Mr. Bowles's land; or killed Lord Galway's rabbits; or who rode Mr. James's horse; or who assaulted the servant of a member. A thousand offenses, so trivial and so absurd, have been thus summarily disposed of, that it would be impossible for any man to maintain that we should be justified in the attempt

to exercise such power upon precedents drawn from the British Parliament.

Sir, if we claim any privilege beyond what the Constitution has specially given, it is only under the implication that we may punish things done within our own view, and may preserve our own existence by expelling an intruder and preventing contempts. Beyond that there can be no claim of privilege by implication.

I believe that it will be found, if ever the precedents which have been relied upon here should come to receive a judicial criticism, that some of them will not stand the test of such an investigation. It will happen here, as it happened in England, that so long as the Houses were permitted to go on, and judge of their own privileges, they claimed them fast enough; but when the common law courts began to take jurisdiction, and submit them to the criticism of public opinion, these privileges have been abridged and reduced in their extent. So it will happen here. If ever we attempt to exercise privileges to the extent which is claimed across the water, enforce them against any individual citizen, and he chooses to refer to the courts, it will be found that they will restrict that claim in the decision which they will give upon it. The privileges given by the Constitution are ample and sufficient. They protect the House against everything against which it is necessary to protect it, and they protect the members, through the courts of law, against any assaults which may be made upon them.

In regard to the assaults on the person of a member: why should he be more privileged to seek redress in two tribunals than any other individual? The judiciary, which is independent; the judiciary, which can reach the person or the property of the offender, is sufficient in the case of the citizen. Is it not sufficient in the case of anybody, whether he be a member or not, who lives under the jurisdiction of our law? Is it not against the spirit of the Constitution to say that he shall be answerable twice—answerable not only in a court of law, which may decide as to his person and his property, but answerable here also?

I acknowledge that, in regard to its own member, the House has discretionary privileges, so as to make him respect its order, and to keep quiet in its proceedings. It may punish him for disorderly conduct, and may, by a vote of two thirds, expel him. That is a power which extends to the member of that very body, not to any other individual. We cannot claim that it be exercised in regard to the member of another House, any more than we could claim to inflict punishment in the case of an indifferent person—such a case as that to which I have referred.

This power of expulsion was given as an extreme remedy for extreme cases. It was vested in a body where it was supposed it would be used with the utmost reserve and caution; because it must have been foreseen that if it should be used under the influence of sectional or party feeling, the act itself would become one of political suicide. We find, as we approach the seat and the center of life, that the cases increase for which the physician cannot prescribe, and for which he must trust to the silent action of the

vital forces. In the great scheme of life, the safeguards are provided rather against the assaults of other persons upon the vital organs, than against any injury which the possessor himself might inflict upon them. Against that danger, the instincts of self-preservation are supposed to afford a sufficient protection, except in the case of a frenzied or misguided will. As it is in the natural, so it is in the artificial body; for if ever this power, which is given over the very organs of life, should come to be exercised rashly and intemperately, from that moment political dissolution will become imminent.

But, Mr. President, happily, in presenting the arguments upon this case, it is not necessary to determine whether the precedents to which I have referred—and referred because I thought it was proper to notice them in this connection—be binding or not, because in truth they do not apply. This case, even if it had occurred in England, would not have been considered a breach of privilege; for there a distinction is drawn between speeches which are printed and published and circulated, and what is said in debate. There it has been established in more cases than one, and particularly in Stockdale's case that, although you shall not be held to be answerable for words spoken in debate, and although you shall not be held to be answerable for those words if published by order of the House of Commons, when the circulation is confined to the members of the House; yet, if you publish and circulate them, even by order of the House, abroad, you do become answerable in a suit for libel. That was decided in Stockdale's case by Lord Denman. So, indeed, it was decided before, in the King against Creevy, before Lord Ellenborough, (1 Maule and Selwyn, 275.) It is indeed an old decision, and not one of late days. As far back as the days of James II., there were two cases in which it was decided. For the publication of Dangerfield's case, two suits for libel were maintained; one against the Speaker, who signed the order for its publication by the House of Commons, and the other against Dangerfield, who circulated it generally. Lord Denman said, in Stockdale's case, (Perry and Davidson, vol 2, p. 121,) "The King against Williams was ill decided, because he was questioned for what he did by order of the House, within the walls of Parliament. The King vs. Dangerfield is undoubted law, because he sold and published beyond the walls of Parliament, under an order to do what is unlawful."

The principle of that decision has been recently maintained, and it is now the law of the land in England; so that if the House of Commons were to authorize a man to publish and circulate defamatory matter, he could be sued for a libel, if the courts of law were to adjudge that it was defamatory. That is the principle settled after long argument in the case of Stockdale vs. Hansard.

It cannot be said that the case is different here, because we have a provision in the Constitution, which says that no member shall be questioned in any other place for any speech or debate in either House. They have a similar provision in their Bill of Rights; but their courts have decided

that this protection extends only to words spoken in debate, or to publications made by order of the House for the use of the House only, and does not cover cases where the publication was made and extensively circulated abroad. The same decision, I believe, will be given here, if ever the case should come up in court, because the same reasons which existed there exist here also.

In Creevy's case, it was well said by Mr. Justice Bayly:

"A member of Parliament has undoubtedly the privilege, for the purpose of producing parliamentary effect, to speak in Parliament boldly and clearly what he thinks conducive to that end. He may even, for that purpose, if he thinks it right, cast imputations in Parliament against the character of any individual, and still he will be protected. But if he is to be at liberty to circulate those imputations elsewhere, the evil would be very extensive. No member, therefore, is at liberty so to do."—*Maulé and Selwyn*, p. 280.

Now, I say, inasmuch as it is manifest that this is a case which arose out of the publication and the circulation of a speech, it is no more a breach of privilege here to question a man for having done it, than it would be in England. I say, too, that, inasmuch as it arose out of the publication, the precedents upon which we have relied do not apply; that this is quite a different case; and that the point now and here made was never made in those other cases. Of course I argue upon the principle that the alleged breach of privilege is founded upon the constitutional provision as to words spoken in debate. I show enough, if I prove that this provision can in no way extend to a speech published and circulated. No one can allege, as it seems to me, that a mere assault upon a Senator is a breach of his parliamentary privilege. It is a violation of his legal rights, and for that wrong the courts afford a remedy.

If this be so, the Legislature of Massachusetts, had no right to pronounce this to be a breach of privilege, or to demand such summary punishment; neither had we the right to send to the House of Representatives and ask that they should take cognizance of the case. I know that such precedents exist in England, because they claim greater privileges there than we do here; and because, too, there each House is the judge of its own privileges; here that authority and that power are denied to us. There can be no necessity for such a practice here. If the constitutional privilege of a member of either House is violated, the remedy, as I think I have shown, is in the courts of law, which are alike open whether the defendant be a member of Congress or a private citizen. If the case be one of intrusion or contempt within the view of the Senate, the remedy must be used by that body itself, because, to be efficacious, it must be prompt, whether the offender be a member of the other House or not. There, if the case be one of breach of privilege, it is to be judged by the one House or the other; and courtesy has required that if a member were the offender his own House should judge him. But experience even there has shown that such a remedy has generally proved to be *brutum fulmen*, and Hatsell has some useful remarks upon that subject.

I say then, sir, that, so far from being gov-

erned by law in the course which we have taken, I respectfully suggest that we have departed from the true view of the power which the Constitution has given us; that we have acted upon the false light of precedents, whose principles do not apply to our case; and that we have made a mistake in the course which we have pursued. At any rate, I will say that surely we have no right to invoke the exercise of an arbitrary jurisdiction of any extreme discretionary power which may be lodged in the other House. We know that the free States of this Confederacy constitute a majority of it. Suppose they were all of them to act in the spirit of these Massachusetts resolutions; suppose they were to encourage their Senators to insult the members from the slave States; suppose they were to say: "If this is resented, you must expel him if you can find two thirds to do it; and if you cannot, you must annoy him by the power of your majority until you make his seat intolerable to him."—I ask, under such circumstances, how long would it be before there would be a dissolution of such an assembly? I ask, what southern man would be willing to sit here if he was thus to be governed by such a power, exercised in such a manner?

Mr. President, I know it may be said, on the other side, is there not danger that freedom of speech will be abridged, if men undertake to resent or punish its excesses? I admit that evils may occur on that side, but not so great on that horn of the dilemma as on this; because it is always to be remembered that, in the other alternative, the courts of law are open, where you may sue by private action for damages, where you may indict for assault, and where the court has power and jurisdiction to punish for the offense, in either person or property; so that there is a full remedy and an impartial tribunal for any such injury. Besides that, we must further remember that one man is about as able to defend himself as another is to assail him, and that in such contests there are two to be engaged, so the probability is that, in the end, no very great mischief can ensue. At any rate, if scenes did occur which were to be deplored, if events did take place which were to be condemned, still we know there is not near so much danger on that side as there would be in employing the arbitrary and discretionary power of the House, vested in it only for extreme occasions, in cases where the judgment might be attributed not so much to the sense of right as to sectional feeling, or to party bias. I think that, under such circumstances as these, it is always best to transfer such feuds from the Houses of Congress to the courts of law—from a tribunal which must of course be, to some extent, prejudiced and partial, to one which is unprejudiced and impartial.

I give this counsel for the sake of peace. I advise such a measure, as one which seems to me to afford a solution by which we may escape from some of those difficulties that seem to threaten us with so much exasperation and strife. I believe that the merits of the whole case may thus be reached, and thus, too, we may save ourselves from the agitation which, rely upon it, is doing great mischief here and abroad. I think the Sen-

ate ought to reverse its position. Indeed, it would be but acting under the precedent in the case of Gunn, (a Senator who challenged a member of the House of Representatives,) if we were to withdraw our application after the apology of the member from South Carolina. In that case the proceedings were dropped the moment the Senator declared his contrition for what had happened. I believe that if this were done here, and the case were left to the courts, we should save both Houses from a scene of strife and exasperation which every patriot and every lover of his country must deplore.

Suppose that two foreign nations were mutually to instruct their representatives to insult and abuse each other: how long would peace be maintained? Suppose that the members of the same family were to use their opportunities of daily intercourse for the purpose of mutual vituperation: how long would harmony exist? Suppose that States which belonged to the same Union should use the common hall of their deliberations for the purpose of mutual crimination and recrimination: how long would that Union be maintained? Sir, "in the letter which killeth" it might endure for a while, but in "the spirit which giveth life" it would soon be gone and lost forever.

Now, sir, I ask if these are not considerations which should be impressed upon all? Our institutions rest not upon parchment securities, but upon the broad basis of public affection. Who shall measure the crime of him that disturbs the waters of the stream of public opinion which to us are the very waters of life—of him who troubles the stream at its fountain that he may defile it through the whole length of its course, until we turn loathing away from its waters, although our thirst may be almost unto death itself? Sir, the laws and the Constitution and the ordinances of our country, to have efficient force and life and being, must be engraved upon the hearts of the people. Once erase or obliterate that inscription, and it will not be long before the lawgiver himself, in some fit of exasperation, will shiver into fragments the tablets upon which they are written, as mere unspeaking stone.

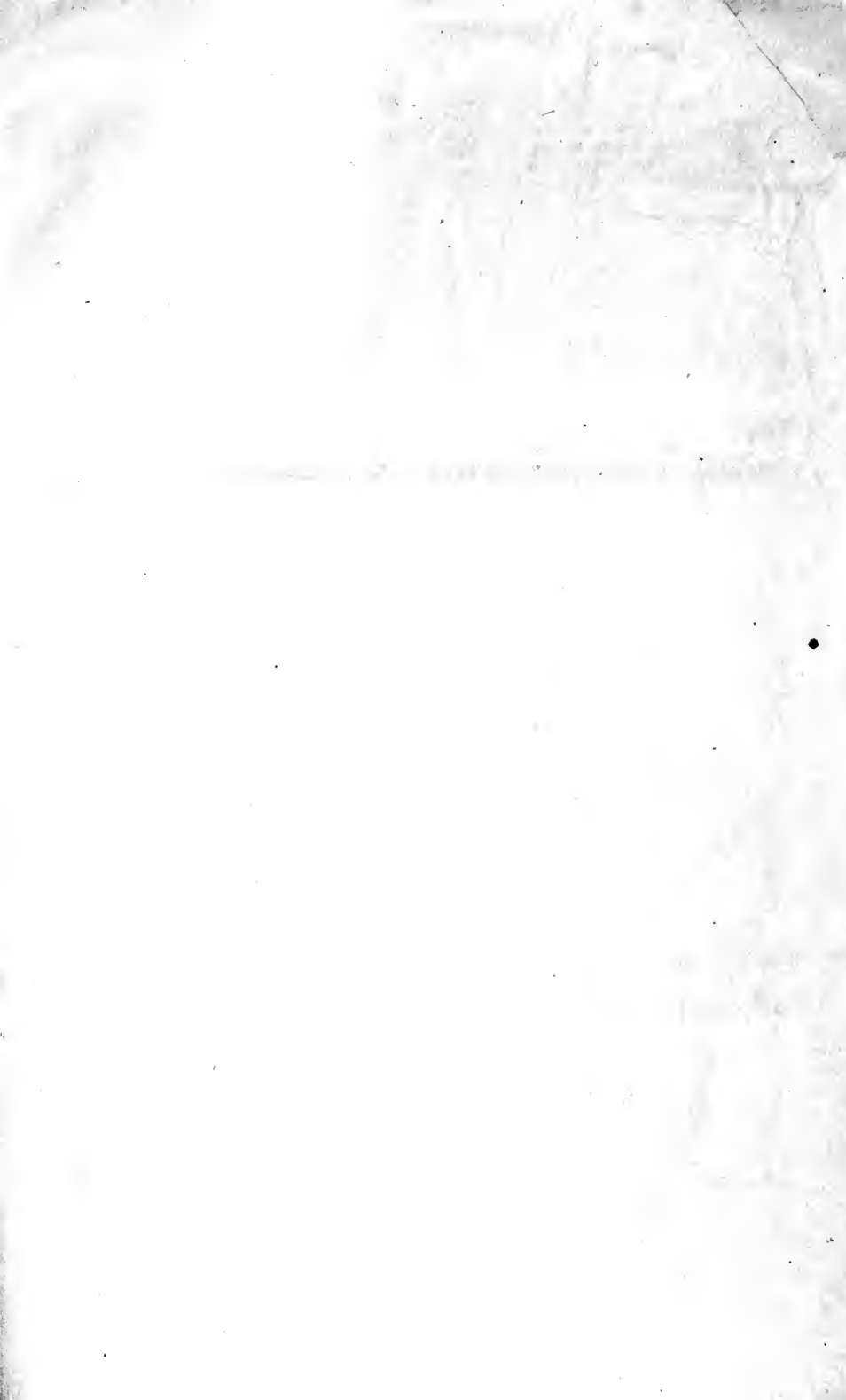
In view of all these circumstances, does it not behoove us to do something to appease this strife, to settle these difficulties, to allay this bitterness? Who could have the heart, at such a moment as this, to engage in the work of crimination and recrimination amongst the States of the Confederacy? We all belong to the same family, and the character of the whole family is disparaged if we injure the reputation of one of its members. What pleasure or what profit should I derive by injuring the reputation of Massachusetts? by dimming the luster of her revolutionary glory? by taking a leaf from that chaplet of immortal flowers with which she is crowned? Sir, so far as I am concerned, instead of taking one stone from the Bunker Hill monument, I would add another to

it. Let it tower to the skies, bearing upwards from earth to heaven whatever message of love and admiration may be transmitted from the living to the dead. Let it stand through the flight of ages, and carry down the story of those men and their deeds to the last syllable of recorded time. I will raise no sacrilegious hand against a single stone on that altar; and if there be any who has a heart for such a deed, he can find no sympathy from me.

Who can have the disposition to disparage the reputation and the military glory of any of the Old Thirteen? If there be any man who can have a heart for such a work, he can have but little feeling in common with me. I will not aid in such a work. What materials are these that we are collecting for history? What weapons are we placing in the hands of those who wish us ill, and who delight in every opportunity to disparage ourselves and our institutions?

Mr. President, it has been said by wise and good men, "give us peace abroad." I sympathize with them in that wish; but it may not always be in our power to secure that peace. It may require the will of another as well as of ourselves; but I say, give us what we can secure if we choose—give us peace at home. We want its opportunities to work out our destiny, and to crown with the glory of success the most wonderful experiment in human happiness that has ever been attempted in the history of man. We must have peace at home if we would wish to inspire either fear or respect abroad. Is there nothing in the condition of things around us—is there nothing in the condition of things abroad, to induce us to do something to compose these differences, to allay this excitement, to settle these feuds? Can any man reconcile it to his conscience to feed high the hot fires of sectional strife on such an occasion as this? Are the doors of our Chamber, are the doors of the Congress of the United States, like those of the temple of Janus, to be opened only for war, for civil war, for domestic strife? or may we not rather close them upon such scenes, or else open them to send forth once more the message of peace and good will, and to proclaim throughout the land a vow to devote ourselves to the common good of a common country, and to bury, as far as we can, the recollection of these unhappy disputes?

Mr. President, I do believe that the time has arrived when we should look at the state of circumstances around us, coolly and dispassionately, and when every man should come to the settlement of these differences with the will to sacrifice much of feeling, anything of the pride of opinion, everything that he can, consistently with duty and conscience, to settle and quiet them. Senators, I say to you that you hold in your hands the issues of life and death to this mighty Republic, to this great Union. On your souls, I charge you to take heed how you deal with them.







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